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May 1, 1998

HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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MAY - 1 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation

In the Matter of Telecommunications Carriers' Use of Customer Proprietary  
Information and Other Customer Information; Implementation of the Non-  
Accounting Safeguards of Sections 271 and 272 of the Communications Act of  
1934, as Amended

CC Docket Nos. 96-115, 96-149

Dear Ms. Salas:

On behalf of AT&T Wireless Services, Inc., I today sent the attached presentation to the Commission staff indicated below. I am submitting two copies of this notice and the attachment in accordance with Section 1.1206(b)(1) of the Commission's Rules.

Sincerely,



Howard J. Symons

cc: Dorothy Attwood  
Jeanine Poltronieri  
Todd Slamowitz  
Lisa Choi  
Brent Olson

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**THE COMMON CARRIER BUREAU CAN AND SHOULD  
CLARIFY THE CPNI RULES TO ENSURE THAT THE TRANSITION  
FROM ANALOG TO DIGITAL SERVICE IS NOT IMPAIRED**

Wireless carriers should be able to transition customers from analog to digital cellular service without having to obtain prior customer approval. Digital service is clearly an “improved” or “alternative” version of the cellular service to which an analog customer currently subscribes. See CPNI Second Report and Order at ¶¶ 24, 35. The FCC previously has recognized the many benefits of converting cellular systems from analog to digital technology, including increased system capacity and spectrum efficiency, the ability to offer a broader array of wireless services, and improved security for communications.<sup>1/</sup> Section 222 of the Communications Act does not preclude a wireless carrier from marketing digital cellular service to its existing analog cellular customers without prior customer approval because it is merely an alternative version of the customer’s existing subscribed service, and therefore is “the telecommunications service from which [the CPNI] is derived.” 47 U.S.C. § 222(c)(1)(A).

The transition from analog to digital also requires that wireless carriers be permitted to use CPNI to market the handset necessary for digital service and the features that comprise total digital service. For the reasons set forth below, neither section 222 nor the CPNI Second Report and Order precludes this use of CPNI.

**Carriers May Use CPNI to Market Digital CPE Necessary for Digital Cellular Service Without Prior Customer Approval**

In the limited context of the transition from digital to analog cellular service, a wireless carrier should also be able to market the appropriate handset to the customer without prior customer approval because providing the handset is a service “necessary to, or used in, the provision of such telecommunications service.” 47 U.S.C. § 222(c)(1)(B). Digital CPE is an essential part of digital cellular service. To obtain digital service from a particular carrier, the customer not only needs a digital, rather than analog, handset, but also must have the correct type of digital handset because different digital transmission technologies have been adopted by different cellular carriers. The wireless carrier must then activate the handset and program it with unique identification and security codes. Providing a customer with the digital CPE that is necessary for the customer to receive digital cellular service is more akin to inside wiring, which the Commission has found to be “a service both ‘necessary to’ and ‘used in’ the provision of wireline telecommunications service.”<sup>2/</sup>

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<sup>1/</sup> See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 12 FCC Rcd 11267, 11269-70 (March 1997) (noting that the conversion of cellular systems from analog to digital technology will facilitate the offering of a broader array of wireless services and help ensure the privacy of cellular calls); Bundling of Cellular Premises Equipment and Cellular Service, 6 FCC Rcd 1732, 1734 (1991) (recognizing that switching customers to digital cellular service will encourage the use of newer, more spectrum efficient technology); Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Service Offerings, 2 FCC Rcd 6244, 6245 (1987) (stating that digital technology promises improved spectrum efficiency, reduced equipment cost and size, and secure communications).

<sup>2/</sup> CPNI Second Report and Order at ¶ 79. As the Commission noted, this interpretation is supported by its decision in the Universal Service proceeding that internal connections are an “additional service” eligible for universal support. Federal-State Board on Universal Service, 12 FCC Rcd 8776, 9016-22 (1997).

### **A Carrier That Has Previously Provided CPE to a Customer May Use CPNI to Market CPE to That Customer Without Prior Customer Approval**

To the extent that a wireless carrier has already provided a customer with both equipment and service, then both the equipment and the service are part of the “total service” that the carrier provides and “improved” or “alternative” versions may be marketed to the customer without the customer’s prior approval.<sup>3/</sup> Moreover, as the FCC noted in the CPNI Second Report and Order, customer information derived from the provision of a non-telecommunications service, such as CPE or information services, is not covered by section 222(c)(1) and therefore may be used to provide or market any telecommunications service regardless of the existing services to which the customer subscribes or customer approval. CPNI Second Report and Order at ¶ 76 n. 291. Because CMRS providers must obtain information regarding the CPE a customer intends to use before service can be initiated, the provider may use this information to market new CPE to their customers without obtaining prior consent.

### **Carriers May Use CPNI to Market Information Services That Are Part of Total Digital Service Without Prior Customer Approval**

Likewise, in the limited context of the transition from digital to analog cellular service, a wireless carrier should be able to market information services to a customer without prior customer approval when these services are offered as part of the total digital service package. The ability to offer services such as voice mail or short messaging is an inherent part of digital service. In order to market digital cellular service, it is necessary for the carrier to be able to explain to the customer what makes digital cellular service better than analog, including the variety of features that are offered as part of the basic package of digital service. In this context, the carrier is not using CPNI to sell the customer a new or a separate service, but rather is suggesting “more beneficial ways of providing the service to which the customer presently subscribes.” CPNI Second Report and Order at ¶ 35.

### **The Common Carrier Bureau May Clarify These Aspects of the CPNI Second Report and Order Under Its Delegated Authority**

It is clear under the CPNI Second Report and Order that a wireless carrier may use CPNI to market digital cellular service to a customer that is currently subscribing to analog cellular service without first obtaining customer approval. The Common Carrier Bureau should clarify that in this limited context, the carrier may also use CPNI to market digital CPE that is necessary to provide digital cellular service and information services that are not marketed separately, but rather are an inherent part of the basic digital service package. Such a clarification would clearly be permissible under the Bureau’s delegated authority.

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<sup>3/</sup> The Commission has long permitted wireless carriers to bundle equipment and service in a single package and many customers accordingly have acquired their current CPE from their current service provider. See Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1992). This is not to say that all CMRS-related CPE must fall within section 222(c)(1)(B) simply because the Commission previously permitted CMRS carriers to use CPNI to market CMRS-related CPE, but only that a carrier that has previously provided CPE to a customer may use CPNI to market improved CPE to that customer without prior customer approval.